

# COUNTY OF YORK

## MEMORANDUM

**DATE:** December 7, 1999 (BOS Mtg 12/15/99)

**TO:** York County Board of Supervisors

**FROM:** Daniel M. Stuck, County Administrator *DM*

**SUBJECT:** York County Community Center Project

### **Background**

As the Board is aware, there has been recurring interest in a community or recreation center for the past two or more decades. Citizen interest led York County government to study this issue and to engage in long-term planning. This has included:

- A study conducted by a "Blue Ribbon Task Force Committee," established by the Board of Supervisors (R87-250) in August of 1987. The Task Force consisted of a member of the Board of Supervisors, citizens, and County staff. The 11-member committee was charged with assessing the need for a County-operated community center in lower York County.
- In February of 1989, at the request of the Committee, the York County Board of Supervisors commissioned an outside research firm to quantify community interest and to undertake an objective needs assessment.
- In recent years the County's Youth Commission has conducted two surveys. Each had subject matter related to Community or Recreation Centers and strongly indicated a need for gathering places for youth of the community.

These initiatives, extensive regular interaction with the community, and staff's professional knowledge provided the County with an excellent foundation of information. A clear facility concept and catalogue of desired amenities emerged (See Matrix, Attachment #1). Staff, recognizing the Board's concern about the costs of both construction and on-going operations, explored the concept of public-private partnerships. In 1994, discussions with various local organizations evidenced potential, should the Board direct a more formal process at a later date. In January, 1997, the Board of Supervisors authorized the purchase of land as a site for the Tabb library and for the future development of a community center in lieu of earlier plans included in the Capital Improvement Program (which had been deleted) to construct a facility through bonded debt. I took that decision by the Board as an indication that the required investment (then estimated at \$7 million) was too great for taxpayers to bear, but that the Board wanted to preserve other options.

The County has now received two proposals for the development of a facility. The principals, Joseph Wallace and Dennis Pearce initially presented the York County Athletic Club (YCAC) proposal, to the Board at a work session on July 28. Danny Carroll, Executive Director of the Peninsula Metropolitan Young Men's Christian Association (YMCA), and other representatives similarly met with the Board on August 25. The Board received complete versions of these proposals and a comprehensive staff report on September 15, 1999. Subsequently, the County solicited additional proposals and comments, both by public advertisement (Attachment #2) and by personal staff contact. A public hearing was conducted on October 20, 1999. At that time the YCAC presented revisions increasing the size of the proposed facility and asking for a significant County cash contribution. No additional proposals were received, but many comments were made supporting one or the other of the existing proposals.

### **Procurement Process/Church and State Issues**

The County has researched two questions that have been raised regarding the community center proposal, one regarding the County's compliance with its procurement ordinance and the other regarding potential church/state issues inherent in a joint venture with a YMCA. The County Attorney has opined that the County is in full compliance with its purchasing ordinance and that the Board may enter into a lease agreement with the YMCA should the Board select that option.

With respect to the York County purchasing ordinance, the County Attorney notes that the Virginia Public Procurement Act specifically authorizes local governments to adopt their own "alternative" purchasing policies and procedures (see Va. Code § 11-35 (D)) which York County has chosen to do by the adoption of its own purchasing ordinance. There is no requirement for an "alternative" purchasing policy to be identical to the State Code, and most local governments in Virginia have, indeed, adopted purchasing policies and ordinances which vary in at least some respects from the State procedure.

Section 2-4 (g) of the York County purchasing ordinance specifically exempts from the usual competition requirements of either sealed bids or competitive negotiation "agreements or contracts entered into between the County and private parties for cost participation or cost sharing in the extension of construction of public utilities *or the provision of other public services.*" Any such agreements must, nonetheless, be approved by the Board regardless of the amount of the contract. It is the intent of that exemption to allow the County to enter into public/private partnerships without having to adhere strictly to the procedural requirements applicable to most public procurement. Indeed, assuming that one can fairly characterize either of the proposed lease agreements as constituting an acquisition of the services of a community center, the proposed agreements fall squarely within the exemption provided by § 2-4 (g) of the York County purchasing ordinance. Consequently, the advertising, which the County did conduct, exceeded the requirements imposed by law. The requirement for Board approval of an agreement which falls within the exemption presumably supplies the stewardship of public funds which is otherwise supplied by the purchasing procedures set out in the ordinance. As to those provisions of

the draft agreement with the YMCA which require financial contributions from the County, the County Attorney notes that Va. Code § 15.2-953 specifically authorizes a local government to make contributions to a "nondenominational" YMCA, YWCA, or to the Salvation Army, as well as to other charitable organizations.

With respect to potential constitutional implications of a long term lease agreement with the YMCA, should the Board decide to do so, the United States Supreme Court has expressly authorized local governments to enter into contracts with religious organizations to provide services, as long as any services paid for with public funds are provided in a nonsectarian manner (Bowen v. Kendrick, 108 S.Ct. 2562 (1988)). Partnerships between governments and religious organizations, therefore, appear to be permissible as long as public funds are not actually utilized to advance religious indoctrination or to promote religion. Also of interest is a 1989 state court case out of Minnesota, In Re: Minneapolis Community Development Agency, which allowed the City of Minneapolis to condemn property and lease part of it to the Minneapolis YMCA for development of a recreational facility. The Supreme Court of Minnesota noted that while the YMCA was originally incorporated as a religious association, it claimed a real estate tax exemption not as a religious institution but as an institution of public charity (as does the Peninsula YMCA). Moreover, the actual operation of the YMCA was conducted in a nonsectarian manner, without regard for religious belief or affiliation, even though these were statements in the Minneapolis YMCA's mission statement of the YMCA's overall religious aims.

In order to insure that a YMCA facility is operated within constitutional guidelines, any lease agreement with the YMCA would prohibit that organization from acting in such a way as to imperil the County under the Establishment Clause of the First Amendment, and to cease any such activities if a court ever determines that they constitute a violation of the constitution by the County. If the YMCA were to violate that provision of the lease, the County would be entitled to terminate the lease, in which case all of the facilities at the Community Center would belong to the County. With that protection in place, and in light of the cited cases (and others), it is the County Attorney's opinion that entering into a lease agreement with the Peninsula YMCA will not violate the constitutional requirement for the separation of church and state.

### **Evaluation Process**

At the close of the October 20, 1999, Public Hearing, the Board directed that staff study both proposals further and develop a recommendation no later than the second Board meeting in December. To do so, I established a review team consisting of the Directors of Community Services and Financial & Management Services, the County Attorney, the IDA Director, and myself.

The Team began the process of evaluating each proposal based on the previously developed concept and the well-defined catalogue of desired amenities. In each instance, information was missing or required clarification, even though the YMCA proposal was far more complete and detailed than the YCAC's. This information was of a nature that

staff felt the two offerors had to have developed in order to submit the proposals that the County had already received. In other words, staff wanted to see the background information used to develop the proposals so that the strength of the offers could be measured.

After reading recent comments in the press before reviewing these proposals, I believe that it is important to outline for the Board the County's extensive efforts to accommodate the proposers of these projects and to secure complete and adequate information.

The County first became aware of the YCAC's interest in the Fall of 1998. Subsequently, various combinations of County staff conferred by phone or in person with the principals on a number of occasions. At each instance, the need to provide well-defined structure and substantive details for their proposed concept was explained and emphasized. This included guidance from the Director of Community Services, the Executive Director of the IDA, Parks & Recreation Manager, and eventually the County Administrator. With each meeting the guidance became more specific and emphasized the importance and need to be clear, complete, and comprehensive.

When the principals met with me on May 26 and had not yet developed their proposal, the Community Services Director provided a written list re-stating the essential elements. (Attachment # 3: Fax to Wallace-Pearce 6/4/99). Arrangements were then made for the principals to present their project to the Board at a work session on July 28, 1999. At that time the written materials presented to the Board were very sketchy and contained only slightly more than a table of contents and outline of the materials that staff had advised would be needed. The comprehensive staff report to the Board (9/15/99) described certain concerns with this proposal.

The YMCA had also expressed interest a number of years ago in a partnership with the County and had ongoing discussions with staff about a potential project. When representatives of the YMCA met with me on May 17, they were also advised of the need to present a complete package to the Board. This presentation was made to the Board on August 25, 1999, and was included in the staff report to the Board of September 15, 1999.

On the day of the public hearing (October 20, 1999), the YCAC submitted a revision to their project concept. This increased the size from a facility of 64,600 square feet to one of 104,000 square feet. A 10-lane competitive pool was added, and the County was asked to contribute \$1,146,000 to the undertaking. No revisions to the revenue stream or the expenditures were reflected in this material.

County staff attempted to schedule a meeting with the principals for both proposals and suggested November 3, 1999. This was done in deference to Dr. Wallace of the YCAC, as he had requested that any meetings be scheduled on Wednesdays, his day off from his veterinary practice. Although the YMCA accepted that date, the YCAC principals did not as Dr. Wallace advised that his father was gravely ill. A second effort was made to schedule a YCAC meeting. This was set for November 10, 1999, at 1:00 pm by the Di-

rector of Community Services personally in consultation with Dr. Wallace, with the proviso that should his father take a turn for the worse, the County would reschedule. That morning staff tried to reach Dr. Wallace and was advised by his office that he wasn't working, they didn't know where he was and that they didn't have his home phone number. The Review Team assembled as scheduled and waited for over an hour. Dr. Wallace called around 2:00, indicating that he heard we were looking for him and that he didn't think the meeting was confirmed. He asked that we mail him some materials. On that same day the Director of Community Services personally hand-delivered the materials to Dr. Wallace at his home. You will find that correspondence attached. (Attachment #4).

The due date for final information needed from both the YMCA and from YCAC was November 30, 1999. The YMCA provided the material on November 15, 1999. The YCAC principals delivered a package late on the afternoon of November 30 which did not fully address the information that had been requested.

There has been ample opportunity for this project to be better defined by the offerors. The principals of the YCAC publicly announced an intent to construct a similar facility in January of 1995 (Attachment #5: Daily Press article 1/16/95) and began discussions with County staff in the Fall of 1998. With each contact, staff described and explained the necessity for a well-defined concept and a firmly detailed business plan. The IDA even provided a copy of the Small Business Administration Business Plan for Small Service Firms as additional guidance. The YMCA has met all required time frames and has provided a complete and detailed proposal to the County.

### **Proposal Overviews**

The following briefly outlines some of the elements that the County considered important in the assessment of *both* proposals and the status of information provided. I want to be very clear in communicating to the Board that the requests staff made in November were not for new information, but were designed to close gaps and secure clarifications.

#### **1. Clear Statement of the Facility:** Explanation of the site, exterior and interior space allocation and construction details.

The County property is located on a major thoroughfare and is highly visible, situated at the entrance to a residential community and is directly across from the significant public investment in a new and very attractive library. Staff indicated a requirement that the architectural design be compatible with the Library, that the building materials must be of equal quality, and that the signage be identical to the Tabb Library. Further, a rendering and description of exterior materials and finishes; conceptual site plan; floor plan with room dimensions, and details of planned construction and construction costs were requested.

Throughout this process it has been important to staff to clarify the amenities proposed in each project. As previously mentioned, there has been a clearly defined catalogue of desired amenities. For example, a pool has been high on the list of citizen interest. The YMCA included a pool, but it appeared to be smaller than would be useful for the school swim teams and public use. In subsequent submissions, the YMCA proposed a larger, more appropriately sized pool. The YCAC initial proposal did not include a pool at all, and references were made to possible future expansion but that the principals did not consider it to be cost effective. It was subsequently included in the second YCAC submission (10/20/99).

A further concern involved confusion regarding the concept for sub-contracting or use of concessionaires for amenities and programs in the YCAC facility. Although it is a creative concept, it has left much unexplained in terms of the manner in which the facility would be operated. As well, until the activities delivered by subcontractors are identified and the corresponding terms and charges are assigned, it is very difficult to assess what would actually be covered by the proposed membership fees.

- A) **YMCA** provided all as requested and committed to the requirements for compatibility and quality. The interior facilities issues were fully explained, and a pool of useful size was detailed as were proposed amenities.
- B) **YCAC** indicated a willingness to meet the exterior standards but provided a contractor's estimate from January of 1999 that addressed construction estimates for an indoor soccer facility with a brick front and a metal building. The issues of interior assignment of space and use of subcontractors were not resolved.

## **2. Fiscal Analysis: Business and marketing plans and fiscal viability.**

The fiscal viability of this project is of critical concern to the County. Both offerors have requested the use of County owned property and a sizable investment of public funds. In addition, should the Board choose to proceed with a public-private partnership, it is important to assure that there is a sound foundation and strong likelihood for financial success. It would surely not be in the County's best interest to have a failed project at that site.

Information was requested from both parties regarding the financial aspects of their proposals. The requested information differed slightly to take into consideration differences in the two entities. For example, the YMCA is a non-profit that intends to solicit donations from individuals, businesses and other local governments. Therefore, the YMCA was asked to provide a detailed fund raising plan with fiscal and donor targets and a timeline. The YCAC was not asked to do that but rather to show evidence of ability to secure financing.

**Financial terms offered by the YCAC in their latest proposal:**

- Lease of the land for a period of 50 years at a monthly rent of \$2,500, provided that the funds are used for scholarships (the net present value of this stream of payments is \$475,000 assuming a discount rate of 6%)
- Lump sum contribution of \$1,146,000 from the County
- Pay annual taxes estimated to be \$48,000

**Financial terms offered by the YMCA in their latest proposal:**

- Contribution of \$2,146,000 spread over 10 years (the net present value of this stream of payments is \$1,326,000 assuming an discount rate of 6%)
- Use of the land at no cost
- The YMCA is tax exempt

Assuming that the two proposals can be carried out as submitted, the YCAC proposal presents a financial package, which is more beneficial to the County. However the proposal presented by the YCAC does not contain adequate financial information for proper evaluation. The major areas of concern are as follows:

- The building proposal only includes an estimate for a 64,600 square feet indoor soccer facility at a construction cost of \$3,294,670. No information is provided for the pool or the various amenities outlined in their proposal (Karate, Rock-Climbing, Food Area, Batting Cage, etc.).
  - The building proposal is for a metal building with 12-foot brick veneer on two sides and the office area only. The YCAC building rendering shows exposed metal above the 12-foot level. This is not compatible with the library design.
  - An integrated pro forma showing all expenses and income is not provided. Elements of the pro forma are included but they do not provide enough detail. For example, projected income is shown, but no market analysis or methodology is provided to indicate how a projection was made of the number of potential members or users of the facility.
  - An important aspect of the YCAC proposal is the leasing of space to vendors (batting cage, karate, dance, etc.). The only information provided regarding this element are income estimates. The YCAC has not provided any proposed agreements with any vendors for these services.
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- The YCAC is a start up venture and obtaining financing for the facility and equipment is a critical issue. The proposal does not include any substantive information for permanent financing. The only information provided is a letter from Crestar indicating that they would be interested in reviewing a proposal to finance the project. No information is provided regarding private investors or secondary sources of repayment.

The YMCA proposal presents a financial plan that is supported by detailed building and operating expense data and realistic income projections. The YMCA has the benefit of constructing and operating similar facilities in this market. The Peninsula Metropolitan YMCA is sound financially and appears to be capable of supporting an additional branch. One staff concern regarding this proposal was the YMCA's ability to raise funds for the new facility. In response the YMCA submitted a preliminary analysis prepared by Sud-des & Associates their development counsel. This analysis clearly showed that a successful capital campaign could be conducted for the Victory Branch. Based on the YMCA's pro forma and ability to support this capital expense their proposal seems to be feasible.

Staff is of the opinion that even though, on the surface, the YCAC proposal appears to provide a greater financial benefit than the YMCA proposal, the YMCA proposal involves less risk and has a much higher probability of success. The YCAC proposal is not supported by detailed financial information and the principals have no experience developing and operating a facility of this type. The YMCA has a comprehensive proposal and years of experience in the development and operation of such facilities.

### **Alternatives**

The Board has several options available:

- Determine not to proceed.
- Delay a decision.
- Choose to proceed in partnership with either the YMCA or the YCAC.

Draft agreements are attached to allow the Board to select either entity and move forward. The YMCA, by being more timely and complete with its submissions, has allowed staff to develop a lease agreement which is in near final form. The draft agreement with the YCAC still has a significant number of provisions which must be addressed.

### **Summary and Recommendations**

There is substantial citizen interest in a community center. The Board has a long-standing commitment to the provision of services without raising taxes. To construct and operate a community center as a County project is estimated to cost \$840,000 annually net of revenues and would almost certainly require a tax increase. A public-private partnership with a fiscally sound entity, providing the desired amenities would make such an



undertaking cost effective in construction and the County would not be responsible for the extensive costs of annual operations.

Staff has conducted a very careful, thorough, comprehensive, and objective analysis. It is clear to us that there is not a firm and complete proposal from the YCAC. Further, given the length of time that these principals have had to develop their concept and the extensive guidance and assistance that they had been provided by County staff, it is not likely that the issues could be resolved in any reasonable time frame. In the opinion of staff, the YMCA is the only valid proposal for the Board's consideration at this time.

I cannot recommend that the Board consider the YCAC proposal. The YMCA appears fiscally sound and has a proven track record of success, as well as a regional and national organization to provide strong and broad support. The YMCA has agreed to the standards of design and construction that the County expects and has offered the desired amenities and programs.

The YMCA is asking for a significant public contribution. The attached draft lease agreement provides for long term use of the County land but does not transfer ownership. Also, the document provides for a slightly lower financial contribution than was requested, \$200,000 annual installments for a 10-year period rather than \$214,600. Although certainly a amount, this is a far smaller investment than if the County were funding the full capital costs of over \$6 million. Based on staff review of other potential private-public partnerships, it is doubtful that a more favorable financial arrangement can be found at the present time. Further, the YMCA has agreed to provide additional benefits for the County and its citizens which include:

- Joiners fee waived in year one and reduced to 50% thereafter
- Reserved time for school swim meets at no charge and time set-aside for swim practices at a cost of \$10.00 per hour
- Priority registration for York residents for programs
- A Teen Center
- A Parks and Recreation Information Center
- Co-sponsorship of events with the County's Division of Parks and Recreation

As a consideration for the residents of the upper County, I am also recommending that the Board subsidize membership in the James City County-Williamsburg Recreation Center. The objective would be to secure membership fees for York's citizens equal to the fees charged residents of James City County. Staff members from the two localities met and discussed the logistics for this. Based on prior practices and current preferences, James City staff would prefer to have individual York County members reimbursed by York County. York would also be asked to consider making a contribution to a swim center if James City proceeds in such development in the future.

Given all these considerations, if the Board desires to provide this type of service to County residents, I would recommend that the Board conclude contractual arrangements

with the Peninsula Metropolitan YMCA for the establishment of the Victory YMCA. I also recommend a County contribution of \$200,000 per year for 10 years toward the construction of this project. The financial contribution should not be made in whole or in part until such time as the YMCA has begun construction on the project. And finally, I recommend that the Board subsidize memberships in the James City County-Williamsburg Recreation Center for York County residents and that staff be directed to develop and implement an appropriate program concurrent with the start of construction of the Victory YMCA.

Proposed Resolution R99-232 will accomplish the above recommendations. If the Board believes that the YCAC proposal should be pursued further, then proposed Resolution R99-238 has been supplied which directs staff to further negotiate the terms of an agreement and to present a final agreement for consideration by the Board within a stated time period to be established by the Board in the resolution.

DMS/ABS

Smith:4111

**Attachments:**

1. Matrix of Community Center Facilities
  2. Advertisement for solicitation of proposals and 10/20/99 public hearing
  3. Written request for information and guidance to YCAC principals 6/4/99
  4. Wallace – Pearce YCAC Correspondence 11/10/99
  5. Daily Press 1/16/95 article regarding YCAC
  6. Request for information from YMCA
  7. Draft Agreement YMCA
  8. Draft Agreement YCAC
  9. Proposed Resolution R99-232
  10. Proposed Resolution R99-238
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